

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOWN OF NORTH HEMPSTEAD, a
Municipal Corporation of the
State of New York,

Defendant.

CIVIL ACTION NO. ^{25 (DOJ #)} (90-11-2-514)

Consent Decree

WHEREAS, contemporaneously with the lodging of this Consent Decree, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this matter pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§9601-9675 ("CERCLA"), for the recovery of certain response costs incurred by the United States and for the performance of remedial action in response to releases and threatened releases of hazardous substances into the environment at the Port Washington Landfill Superfund site (the "Site"), located in the Town of North Hempstead, New York;

WHEREAS, EPA, pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, placed the Site on the National Priorities List ("NPL"), which is codified at 40 CFR Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 1983, and the New York State Department of Environmental

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Conservation ("NYSDEC") placed the Site on the New York State Registry of Inactive Hazardous Waste Sites as a class two site, pursuant to ECL 27-1305;

WHEREAS, prior to the commencement of landfill operations at the Site, the area was used for sand and gravel mining operations since the 1880's;

WHEREAS, landfill operations commenced at the Site in March 1974 with the disposal of incinerator ash, residential and commercial refuse, and construction rubble;

WHEREAS, in September 1974, the Nassau County Department of Health ("NCDOH") reported that a system for the removal of leachate emanating from the Port Washington Landfill (the "Landfill") had not been installed at the Site;

WHEREAS, in July 1975, NCDOH reported the presence of leachate in areas of the Landfill not protected by the liner system which was designed, in part, to contain leachate;

WHEREAS, in March 1976, a leachate control system was installed at the Site;

WHEREAS, in June 1977, NCDOH reported the detection of organic and inorganic constituents in groundwater monitoring wells at the Site;

WHEREAS, in June 1977, NCDOH estimated that leachate had been discharged into the environment from the Site between 1974 and 1977, and concluded that said leaching condition continued to exist at the Site;

WHEREAS, in the winters of 1979, 1980, and 1981, "puffbacks", or the unanticipated combustion of accumulated methane gases, occurred in homes immediately west of the Landfill;

WHEREAS, in 1981, air monitoring conducted by the Nassau County Fire Commission indicated excessive methane levels in several residences at the Site;

WHEREAS, the Town of North Hempstead (hereinafter referred to as "Settling Defendant") implemented a gas venting system to ignite and burn the gases and organic contaminants in those gases;

WHEREAS, testing on February 26, 1981 by NCDOH of the Southport Well, a component of the Port Washington Water District's distribution system, detected the presence of hazardous substances, as defined in CERCLA Section 101(14), 42 U.S.C. § 9601(14), including 1,1,1-trichloroethane, 1,2-dichloropropane, and tetrachloroethylene;

WHEREAS, re-sampling of the Southport Well on May 19 and June 9, 1981 by NCDOH detected the presence of vinyl chloride as well, which also is a hazardous substance as that term is defined in CERCLA;

WHEREAS, on June 12, 1981, the Southport Well was closed and removed from the Port Washington Water District's distribution system;

WHEREAS, air monitoring between July and October 1982 by EPA's Field Investigation Team detected the presence of

methane and hazardous substances, including vinyl chloride, toluene, tetrachloroethylene, trans 1,2-dichloroethylene, 1,1-dichloroethane, 1,1,1-trichloroethane, and ethylbenzene in gas vents at the Site;

WHEREAS, on July 21, 1983, Settling Defendant discontinued accepting waste at the Site;

WHEREAS, Settling Defendant disposed of approximately 260,000 tons per year of material, including residential, commercial and industrial refuse, dry cleaning waste, construction debris, and incinerator ash;

WHEREAS, NYSDEC permitted the disposal of oil and gasoline contaminated soil and packed asbestos on several occasions during the history of the Site;

WHEREAS, in February 1984, NYSDEC requested that EPA assume the lead enforcement role in negotiations with Settling Defendant, the only potentially responsible party ("PRP") identified at that time;

WHEREAS, on October 29, 1985, Settling Defendant was notified of its status as a PRP and provided with the opportunity to conduct a Remedial Investigation/ Feasibility Study ("RI/FS") at the Site;

WHEREAS, Settling Defendant declined the opportunity to conduct an RI/FS at the Site;

WHEREAS, EPA developed a work plan in October 1985 for the conduct of an RI/FS, and in December 1986, EPA initiated an RI/FS;

WHEREAS, monitoring of gas emissions at the Landfill, as part of the RI/FS, detected hazardous substances including vinyl chloride, 1,1-dichloroethane, trichloroethene, 1,1-dichloroethene, 1,2-dichloroethene, trans-1,2-dichloroethene, 1,1,2,2,-tetrachloroethane, tetrachloroethene, 1,1,1-trichloroethane, xylene, toluene, chloroform, benzene, and chlorobenzene;

WHEREAS, the majority of these hazardous substances were also detected in gas monitoring wells in the south and southwest portion of the Site;

WHEREAS, groundwater studies as part of the RI/FS have indicated that elevated levels of volatile organic contaminants may contain a vertical flow to the northwest, which, if left unaddressed, could be carried downward into the deeper aquifers in the area including the Port Washington and Lloyd aquifers;

WHEREAS, volatile organic contaminants have also been detected in groundwater on numerous occasions at elevated levels in the western portion of the Site, indicating the presence of a source of contamination continuing to impact the groundwater in the area;

WHEREAS, the RI/FS identified three potential sources of groundwater contamination as follows: (a) volatile organic contaminants in the vapor phase in the unsaturated zone of the Landfill which is carried into the groundwater by rainfall, (b) landfill leachate, and (c) concentrated liquid volatile organic contaminants at the Site;

WHEREAS, the RI/FS detected inorganic contaminants, which are commonly found in landfill leachate, in the eastern portion of the Site;

WHEREAS, pursuant to Section 117 of CERCLA, the completed RI/FS and the Proposed Remedial Action Plan ("PRAP") were made available to the public for a public comment period commencing on July 21, 1989;

WHEREAS, a public meeting was held by EPA on August 9, 1989, to present the findings of the RI/FS and discuss the details of the PRAP;

WHEREAS, on September 30, 1989, the Regional Administrator of EPA Region II issued a Record of Decision ("ROD") setting forth EPA's selection of remedial action for the Site, which includes a responsiveness summary setting forth EPA's responses to all significant comments raised by the public;

WHEREAS, the major components of the remedial action selected in the ROD are as follows:

- A. the closure of the L-4 portion of the Landfill in accordance with the requirements for New York State sanitary landfills, as set forth in 6 NYCRR Part 360;
- B. an extension of the existing active gas venting system to encompass the perimeter of the L-4 portion of the Landfill;
- C. the addition of a standby combustion unit for the combustion of gases collected in the existing gas collection system at the Site;

- D. the rehabilitation of the existing active gas venting system;
- E. the placement of extraction wells in the area of the Upper Glacial Aquifer where elevated levels of groundwater contamination were found during the remedial investigation;
- F. the treatment of the extracted groundwater for metals removal and air stripping prior to discharge to an aquifer recharge basin;
- G. the treatment by air stripping of any water extracted from the Southport Municipal Well, subject to the necessity, in the sole discretion of EPA, of returning said Well to service and contemporaneous review by EPA of relevant monitoring data to ascertain continued appropriateness of treatment;
- H. the installation of groundwater monitoring wells to further define the extent of any leachate and volatile organic contaminants emanating from the L-4 portion of the Landfill;
- I. the installation of additional groundwater and landfill gas wells at the Site which will be used in conjunction with existing Landfill gas and groundwater monitoring wells in order to comprehensively monitor the Site;

J. the development and performance of a comprehensive monitoring plan for the Site, including performance monitoring of the active gas venting system; and

K. the development and performance of a post closure operation and maintenance plan which will govern those remedial actions selected in the ROD as well as those presently employed for the Site;

WHEREAS, the State of New York ("State") gave its concurrence with respect to the remedy selected in the ROD;

WHEREAS, EPA and Settling Defendant, in accordance with Section 121(d)(1) of CERCLA, agree that the remedial action plan adopted by EPA and embodied herein will attain a degree of cleanup of waste materials released at the Site and control further releases so as to assure protection of human health and the environment at the Site;

WHEREAS, EPA provided notice of the ROD to the public and made it available to the public for review;

WHEREAS, EPA notified Settling Defendant and other potentially responsible parties of the remedy selected in the ROD and provided them with an opportunity to agree to implement the remedy;

WHEREAS, on July 20, 1990, Settling Defendant offered to assume responsibility for the implementation of the remedy selected in the ROD as provided in this Consent Decree;

WHEREAS, in accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. §9621(f)(1)(F), EPA has notified the State of

EPA's negotiations with Settling Defendant regarding this Consent Decree and has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree;

WHEREAS, pursuant to Section 122(j) of CERCLA, 42 U.S.C. §9622(j), EPA has notified the Federal natural resources trustees of its negotiations with Settling Defendant regarding this Consent Decree and has encouraged the participation of the Federal natural resource trustees in such negotiations;

WHEREAS, Settling Defendant agrees to implement the work required hereunder, and EPA has determined that if this Consent Decree is complied with, the work required under this Consent Decree will be done properly and promptly by Settling Defendant, and EPA has determined that Settling Defendant is qualified to implement said work;

WHEREAS, it is Settling Defendant's intention to maximize, to the greatest practical extent, its eligibility for reimbursement of response costs incurred in the performance of the obligations of this Consent Decree from the State pursuant to Title 3 of the Environmental Quality Bond Act and the rules, regulations, and guidance thereunder;

WHEREAS, pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, the United States and Settling Defendant have each stipulated and agreed to the making and entry of this Consent Decree prior to the taking of any testimony, based upon the pleadings herein;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that entry of this Consent Decree is in the public interest;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

The Court has jurisdiction over the subject matter of this action and the Parties to this Consent Decree pursuant to Sections 106, 107, and 113 of CERCLA, 42 U.S.C. §§9606, 9607, and 9613, and 28 U.S.C. §1345. The Complaint states claims against Settling Defendant upon which relief may be granted. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. §9613(b). Settling Defendant waives all objections to this Court's jurisdiction to enter and enforce this Consent Decree.

II.

PARTIES BOUND

This Consent Decree applies to and is binding upon the undersigned party and its officers, employees, agents, receivers, trustees, successors and assigns. Each undersigned representative of the parties to this Consent Decree certifies that he or she is authorized by the entity which he or she represents to enter into the terms and conditions of this Consent

Decree and to execute and bind legally that entity to it.

Settling Defendant shall provide a copy of this Consent Decree to each contractor and subcontractor retained to perform the Work required by this Consent Decree and shall condition all contracts and subcontracts entered into for the performance of such Work upon compliance with the terms and conditions of this Consent Decree. Each contractor and subcontractor shall be deemed to be related by contract to Settling Defendant within the meaning of 107(b)(3) of CERCLA, thus Settling Defendant shall be responsible to the United States for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree.

III.

DEFINITIONS

Whenever the following terms are used in this Consent Decree, the following definitions specified in this Section shall apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

B. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next working day.

C. "EPA" means the United States Environmental Protection Agency.

D. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

E. "National Contingency Plan" or "NCP" shall mean the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, as codified at 40 C.F.R. Part 300, including any amendments thereto.

F. "On-site" shall have the meaning provided in the NCP, at 40 C.F.R. 300.400(e), including the areal extent of contamination migrating from the L-4 portion of the Landfill beyond the legal boundary of the Landfill.

G. "Operation and Maintenance" or "O&M" means those activities required under this Consent Decree for the purpose of maintaining the effectiveness of the measures taken in the Remedial Action (as defined below) following the implementation of those measures.

H. "Party" or "Parties" means the United States of America and/or Settling Defendant.

I. "Plaintiff" means the United States of America acting on behalf of EPA.

J. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 30, 1989 by the Acting Regional Administrator, EPA Region II, and all attachments thereto.

K. "Remedial Action" means the remedy authorized by the September 30, 1989 ROD with respect to the Site, as further delineated in this Consent Decree and the various EPA-approved plans referred to in Section VI., below.

L. "Response Costs" means any costs incurred by Plaintiff pursuant to CERCLA.

M. "Settling Defendant" means the Town of North Hempstead, a municipal corporation located in New York State, and its agents, officers, officials, receivers, trustees, successors, and assigns.

N. "Site" means the Port Washington Landfill Superfund Site, including the L-4 portion of the Landfill and any areas affected by contamination emanating therefrom, located in the Town of North Hempstead, Nassau County, New York.

O. "State" means the State of New York.

P. "Work" means all work required by and pursuant to this Consent Decree, including the implementation and operation and maintenance of the Remedial Action authorized by the ROD and the preparation of the schedules, plans and reports required hereunder to be submitted in connection therewith.

Q. All terms not otherwise defined herein shall have their ordinary meanings, except that those terms defined in Section 101 of CERCLA, 42 U.S.C. §9601, or in regulations promulgated under CERCLA, shall have the meanings set forth therein.

IV.

PURPOSE

The purpose of this Consent Decree is to serve the public interest by protecting the public health, welfare, and the environment from releases and threatened releases of hazardous substances at and from the Site and to settle certain claims asserted by the United States against Settling Defendant as stated in the Complaint.

V.

GENERAL PROVISIONSA. Commitment of Settling Defendant:

Settling Defendant agrees to finance and/or perform the Work in accordance with this Consent Decree, including the standards, specifications, requirements and schedules set forth herein or developed hereunder, and approved by EPA.

B. Permits and Approvals:

1. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable or relevant and appropriate local, state and Federal laws, regulations and permits, including, but not limited to, laws relating to occupational safety and health. In the event that there is a conflict in an application of applicable Federal, state or local laws or regulations, the more stringent law or regulation shall apply. Notwithstanding any other provision in this Consent

Decree and pursuant to Section 121(e)(1) of CERCLA, no Federal, state or local permits shall be required for any response action conducted entirely on-site. Settling Defendant shall obtain all permits and approvals necessary for off-site work under Federal, state or local laws and shall submit timely applications and requests for, and shall diligently seek to obtain, any such permits and approvals. This Consent Decree is not, nor shall it act as, nor is it intended by the Parties to be, a permit issued pursuant to any Federal, state or local law or regulation.

2. Settling Defendant shall include in all contracts or subcontracts entered into for Work required under this Consent Decree provisions stating that such contractors or subcontractors, including its agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with this Consent Decree and all applicable laws and regulations.

C. National Contingency Plan:

Settling Defendant shall perform the Work in accordance with the NCP, 40 CFR Part 300, and any amendments thereto. The parties agree that the ROD, as set forth in Appendix 1, and the Remedial Action are consistent with the NCP, as it existed at the time that the ROD was issued.

D. Compliance with Other Laws

1. All off-site transfer, treatment, storage, or disposal of hazardous substances by Settling Defendant must be in

compliance with the applicable requirements of the Resource Conservation and Recovery Act, 42 U.S.C. §§6901,-6991, Section 121(d)(3) of CERCLA, 42 U.S.C. §9621(d)(3), the Toxic Substances Control Act, 15 U.S.C. §§2601-26, as well as their implementing regulations, and all other applicable laws, including, but not limited to, 40 CFR Parts 262 and 263 and 6 NYCRR Part 372.

Furthermore, Settling Defendant shall designate in the Work Plan required by Section VI., below, to the extent practicable, any facilities that Settling Defendant proposes to use for such off-site transfer, storage, treatment, or disposal. Any and all off-site disposal activities conducted by Settling Defendant under this Consent Decree shall be performed in conformance with the NCP, and any amendments thereto, and Revised Procedures for Planning and Implementing Off-site Response Actions (U.S. EPA Office of Solid Waste and Emergency Response, November 13, 1987).

2. Settling Defendant shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to the EPA Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards. The notification shall be in writing, and shall include, where available, (a) the name and location of the facility to which the hazardous substances are to be shipped, (b) the type and quantity

of the hazardous substances to be shipped, (c) the expected schedule for the shipment of the hazardous substances, and (d) the method of transportation. Settling Defendant shall notify the receiving state of major changes in the shipment plan, such as a decision to ship hazardous substances to a different facility whether in the same state or in another state.

3. Settling Defendant shall provide EPA with all relevant information, including information required in Paragraph V. D. 2., above, on the off-site shipments as soon as practicable after the award of the contract and before hazardous substances are shipped.

E. Settling Defendant shall give EPA fourteen (14) days advance notice of all scheduled field activities to be performed pursuant to this Consent Decree and shall notify EPA of any changes in said schedule which are necessary, such as schedule changes caused by adverse weather, contractor rescheduling, or other causes. Such notification shall in no way excuse Settling Defendant from its obligation to perform the work required under this Consent Decree in the periods set forth herein.

F. Settling Defendant shall ensure that a qualified professional engineer oversees the work conducted at the Site. Furthermore, the Project Coordinator or his or her designated coordinator shall be present at the Site to observe and inspect Work at all times when Work is being performed at the Site under this Consent Decree.

G. Notice of Obligations to Successors-in-Title

1. Within thirty (30) days after the entry of this Consent Decree, Settling Defendant shall record a certified copy of this Consent Decree in the Nassau County Clerk's Office in Mineola, Nassau County, New York. Thereafter, each deed, title, or other instrument of conveyance for property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and any lien which the United States may retain and shall reference the recorded location of this Consent Decree and any restrictions applicable to the property under this Consent Decree.

2. The obligations of Settling Defendant with respect to ownership of property included in the Site, with respect to the provision of access under Section XI. shall run with the land and shall be binding upon Settling Defendant and any and all persons who subsequently acquire any ownership interest in the Site or portion thereof (hereinafter, "Successors-in-Title"). The recording of this Consent Decree as required above is and shall be deemed notice that Settling Defendant has the obligation to provide access to any portion of the Site owned by Settling Defendant, which obligation shall run with the land. Each subsequent deed to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property. In addition, Settling Defendant shall provide for conveyancing and recording of easements for access to such property to the United States for the purposes of

monitoring and implementation of the activities required under this Consent Decree. The granting of such easements pursuant to this paragraph shall not operate to make the United States an owner or operator of the Site for purposes of liability under any environmental statute administered by EPA.

VI.

WORK TO BE PERFORMED

A. Remedial Design

1. Selection of Supervising Contractor

a. All aspects of the work to be performed by Settling Defendant pursuant to this Consent Decree shall be under the direction and supervision of a qualified contractor (hereinafter "Supervising Contractor"), the selection of which shall be subject to approval by EPA after an opportunity for review by the State. Within 45 days after the lodging of this Consent Decree, Settling Defendant shall notify EPA in writing of the name, title, and qualifications of any supervising contractor proposed to be used in carrying out work under this Consent Decree. If at any time thereafter Settling Defendant proposes to change the Supervising Contractor, Settling Defendant shall give such notice to EPA and shall obtain approval from EPA before the new Supervising Contractor performs any work under this Consent Decree.

b. If EPA disapproves of any contractor proposed by Settling Defendant pursuant to paragraph A.1. of this Section, Settling Defendant shall submit to EPA a list of contractors that

Settling Defendant would deem acceptable within 30 days of receipt of EPA's disapproval of the contractor previously proposed. Settling Defendant may select any EPA-approved contractor from that list and shall notify EPA of the name of the contractor selected within 21 days of EPA's designation of approved contractors.

2. RD Workplan

a. Within 60 days of the selection of the Supervising Contractor or within thirty (30) days of the entry of this Consent Decree, whichever is later, and according to the schedule set forth below, Settling Defendant shall submit to EPA for review and approval a proposed remedial design workplan (RD Workplan) outlining the following activities:

- (1) the design and construction of a low permeability cap for the L-4 portion of the Landfill, consistent with New York State landfill closure requirements, and the operation and maintenance of said cap, including any design and field studies;
- (2) the rehabilitation of the existing active gas venting system;
- (3) the extension of the existing active gas venting system to encircle L-4;
- (4) all necessary modifications to the existing active gas venting system needed to accommodate the above-referenced modifications, including

redundant capacity where required in accordance with established industry standards;

(5) the performance of a groundwater remedial design study to determine the appropriate design for the groundwater extraction well and treatment system for the Upper Glacial Aquifer, as described in the ROD;

(6) the design and construction of a groundwater extraction well and treatment system to address the identified contamination in the Upper Glacial Aquifer as described in the ROD;

(7) the performance of a groundwater and gas monitoring program to comprehensively monitor L-4;

(8) the development and conduct of an operation and maintenance manual ("O & M Manual") for each remedial action presented in the ROD and Remedial Design;

(9) the development and implementation of a community relations plan;

(10) the performance of a groundwater investigation to determine the extent of contamination emanating from L-4 beyond its northern boundary.

b. The RD Workplan shall address, although not necessarily be limited to, the implementation of the following:

- (1) an overall implementation strategy for the remedy, which shall include proposed timelines;
- (2) a strategy to prevent the migration of subsurface landfill gas beyond the boundary of L-4 during remedial activities at the Site;
- (3) a strategy for the implementation of the plans and specifications for the remedy set forth in the ROD.

c. EPA will review and comment on the RD Workplan. Within 30 days of Settling Defendant's receipt of EPA's comments, Settling Defendant shall modify the RD Workplan as required by those comments, or as otherwise approved by EPA, and resubmit the RD Workplan as modified to EPA. At such time as EPA determines that the RD Workplan is acceptable, EPA will transmit to Settling Defendant a written statement to that effect. Settling Defendant shall perform the Remedial Design in conformance with the EPA-approved RD Workplan and the ROD.

d. Within thirty (30) days of notification by EPA that the Southport Well must be reactivated, Settling Defendant shall submit to EPA for review and approval a proposed schedule for the submission of a RD workplan outlining the implementation of the remediation specified in the ROD for the Southport Well. Settling Defendant shall be so notified by EPA upon a demonstration to the satisfaction of EPA (a) that the reactivation of the Southport Well is required as a public water

supply and (b) that treatment of the water extracted from the Southport Well is appropriate and required.

3. Project Operations Plan

a. Within sixty (60) days of Settling Defendant's receipt of EPA's approval of the RD Workplan, a Project Operations Plan ("POP") for remedial design shall be developed and submitted. The POP shall encompass the requirements set forth above in Subsection 2. a (1)-(10) of this section. The POP shall include the following:

- (1) a map depicting water and gas sampling locations;
- (2) a comprehensive management plan, including identification of contractors and subcontractors and their respective responsibilities for performance of sampling, analysis and monitoring activities;
- (3) a schedule for performing specific tasks;
- (4) a Quality Assurance/Quality Control ("QA/QC") Plan suitable to the data quality objectives required to design the remedy;
- (5) provisions and schedules for the completion and submission to EPA of the results of any such analysis, as well as QA/QC validation of the laboratory data and sampling and analytical procedures used for each sample obtained;

(6) a description of the chain of custody procedures to be followed, which shall conform with those set forth in Section 1.3 of the EPA publication "Test Methods for Evaluating Solid Wastes", November, 1986 ("SW-846");

(7) a health and safety plan, consistent with Section VIII, below;

(8) a provision that any laboratory used by Settling Defendant shall subscribe to EPA Quality Assurance Procedures unless not otherwise required. Sampling data generated consistent with the QA/QC Plan shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Settling Defendant shall assure that EPA personnel or authorized representatives are allowed access to any laboratory utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall have any such designated laboratory analyze samples submitted by EPA for quality assurance monitoring.

(9) the curriculum vitae of each professional expected to participate in on-Site monitoring activities, with a provision for submitting further curricula vitae as other professionals

become or are about to become involved in these activities.

b. EPA will review and comment on the POP. Within thirty (30) days of Settling Defendant's receipt of EPA's comments, Settling Defendant shall modify the POP as required by those comments or as otherwise approved by EPA and resubmit the POP, as modified, to EPA. At such time as EPA determines that the POP is acceptable, EPA will transmit to Settling Defendant a written statement to that effect.

4. Engineering Design Report

a. Within 30 days of submission of the proposed RD Workplan, Settling Defendant shall submit an Engineering Design Report which will include all appropriate design parameters for the rehabilitation of the existing active gas venting system;

b. Within 180 days of approval by EPA of the POP, Settling Defendant shall submit an Engineering Design Report for closure of the L-4 portion of the Landfill.

c. Within 300 days of approval by EPA of the POP, Settling Defendant shall submit a remedial design study report for the groundwater extraction well and treatment system for the Upper Glacial Aquifer.

d. Within sixty (60) days of approval by EPA of the remedial design study report for the groundwater extraction well and treatment system for the Upper Glacial Aquifer, Settling Defendant shall submit an Engineering Design Report for the extraction and treatment of the Upper Glacial Aquifer.

5. Plans and Specifications

a. Within 120 days of approval by EPA of the Engineering Design Report for the rehabilitation of the existing active gas venting system, pursuant to paragraph D.1. of this Section, Settling Defendant shall submit a ninety-five percent (95%) complete Plans and Specifications Report for rehabilitation of the existing active gas venting system;

b. Within 30 days of approval by EPA of the ninety-five percent (95%) complete Plans and Specifications Report for the rehabilitation of the existing active gas venting system, Settling Defendant shall produce a final Plans and Specifications Report for the rehabilitation of the existing active gas venting system.

c. Within 180 days of approval by EPA of the Engineering Design Report for closure of the L-4 portion of the Landfill, pursuant to paragraph 4.b. of this Section, Settling Defendant shall submit a draft closure plan for said closure.

d. Within 60 days of approval by EPA of the draft closure plan, Settling Defendant shall submit a thirty-five percent (35%) complete Plans and Specifications Report for closure.

e. Within 120 days of approval by EPA of the Engineering Design Report for the groundwater extraction well and treatment system for the Upper Glacial Aquifer, pursuant to paragraph 4.d. of this Section, Settling Defendant shall submit a thirty-five percent (35%) complete Plans and Specifications

Report for the implementation of said system.

f. Within 90 days of approval by EPA of the thirty-five percent (35%) complete Plans and Specifications Report for the groundwater extraction well and treatment system for the Upper Glacial Aquifer, Settling Defendant shall submit a ninety-five percent (95%) complete Plans and Specifications Report for said system.

g. Within 60 days of approval by EPA of the thirty-five percent complete (35%) complete Plans and Specifications Report for Closure, Settling Defendant shall submit a ninety-five percent (95%) complete Plans and Specifications Report for closure.

h. Within 30 days of the approval by EPA of the ninety-five percent (95%) complete Plans and Specifications Report for groundwater extraction well and treatment system for the Upper Glacial Aquifer, Settling Defendant shall submit a final Plans and Specifications Report for said system.

i. Within 30 days of approval by EPA of the ninety-five percent (95%) complete Plans and Specification Report for closure, Settling Defendant shall submit a final Plans and Specifications Report on closure.

B. Remedial Action

1. RA Workplan

a. Within 45 days of receipt of EPA's written notice that the Remedial Design for any element of the remedy as described under Section A. 5., above, is approved, Settling

Defendant shall submit to EPA for review and approval a proposed remedial action workplan (RA Workplan) for implementation of that element of the remedy. The RA Workplan shall address, though should not necessarily be limited to, implementation of the following:

(1) Construction services, including but not limited to, review of shop drawings to confirm consistency with the intent of the remedial design, construction oversight, and the submission of engineering drawings depicting the constructed facility;

(2) Preparation of an O & M Manual, which includes at a minimum all required equipment operation manuals, spare parts inventory, and alternate power supply considerations, if applicable;

(3) Community relations planning;

(4) Initial testing program;

(5) Start-up services;

(6) Schedules for the above, including construction;

(7) Provisions to prevent migration of sub-surface landfill gas to areas beyond the boundary of L-4 during remedial actions involving the active gas venting system;

(8) Additionally, the RA Workplan for the closure segment of the remedy will contain a proposed RD

Workplan and schedule for the design of the remainder of the perimeter active venting system, including thirty-five percent (35%), ninety-five percent (95%), and final plans and specifications. The RA Workplan for this portion of the remedy shall be conducted pursuant to Part B. of this Section entitled Remedial Action.

b. EPA will review and comment on each RA Workplan. Within 30 days of Settling Defendant's receipt of EPA's comments, Settling Defendant shall modify such RA Workplan as required by those comments, or as otherwise approved by EPA, and resubmit the workplan, as modified, to EPA. At such time as EPA determines that an RA Workplan is acceptable, EPA will transmit to Settling Defendant a written statement of approval. Settling Defendant shall perform the remedial action in accordance with the ROD and the corresponding EPA-approved RA Workplan.

c. Within 180 days of Settling Defendant's receipt of EPA's statement of approval of an RA Workplan, Settling Defendant shall complete contractor procurement and initiate construction activities in conformance with the EPA-accepted remedial design for such corresponding element of the remedy.

d. Within 90 days of the completion of construction of any remedial action under this Consent Decree, Settling Defendant shall submit to EPA as-built drawings which depict the constructed system. At such time as EPA determines

that said engineering drawings are acceptable, EPA will send Settling Defendant a written statement of approval.

e. After completion of construction of the final remedial action required under this Consent Decree, Settling Defendant shall notify EPA, and Settling Defendant and its contractor shall be available for a final inspection by EPA and/or EPA's representatives. The final inspection shall include an inspection tour of the entire project to determine project completeness, and operational testing of all equipment.

f. Prior to the final inspection, Settling Defendant shall submit a proposed O & M Manual which shall address the O & M requirements for the facility as actually constructed. This O & M Manual shall conform to the EPA guidelines contained in "Considerations for Preparation of O & M Manuals," EPA 68-01-0341.

g. EPA shall review and comment on the proposed O & M Manual. At such time as EPA determines that the O & M Manual is acceptable, EPA will provide Settling Defendant with a written statement of approval.

VII.

U.S. EPA PERIODIC REVIEW TO ASSURE PROTECTION OF HUMAN

HEALTH AND ENVIRONMENT

A. To the extent required by Section 121(c) of CERCLA, 42 U.S.C. §9621(c), and any applicable regulations, EPA will review the Remedial Action at the Site at least every five (5) years after the initiation of any selected remedial action to

assure that human health and the environment are being protected by the remedial action being implemented. If upon any such review, EPA determines that further response action is appropriate at the Site to assure protection of human health and the environment, then EPA may take or require Settling Defendant or any other responsible parties to take such additional response action.

B. Settling Defendant shall reimburse EPA for the costs incurred in conducting the periodic reviews referred to in this Section, as set forth in Section XX.

C. Upon completion of each of the reviews pursuant to this Section, EPA will notify Settling Defendant of its determination and may order additional response action pursuant to Section 106 of CERCLA, or may take additional response action pursuant to Section 104 of CERCLA, to assure protection of human health and the environment.

D. Settling Defendant and the public shall be provided with an opportunity to comment on any additional activities proposed by EPA as a result of the review conducted pursuant to Paragraph VII. A. and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region II, shall determine in writing whether additional activities are appropriate.

VIII.

SITE HEALTH AND SAFETY PLANS

Any Site Health and Safety Plan that Settling Defendant is to submit pursuant to this Consent Decree shall satisfy the requirements of 29 CFR §1910.120, as well as EPA's "Standard Operating Safety Guides" (OSWER, 1988; or as revised and updated).

IX.

QUALITY ASSURANCE/QUALITY CONTROL; CHAIN OF CUSTODY

A. Unless otherwise provided in an EPA approved POP, as set forth in Section VI. A. 3., the QA/QC Plan(s) to be submitted by Settling Defendant pursuant to this Consent Decree shall be completed in accordance with the EPA publication "Test Methods for Evaluating Solid Wastes" ("SW-846") (November, 1986) and the EPA document entitled "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" (QAMS-005/80), or any revised versions thereof.

B. Settling Defendant shall use QA/QC procedures in accordance with the QA/QC Plan(s) submitted and approved by EPA pursuant to this Consent Decree; unless expressly stated to the contrary, Settling Defendant shall use standard EPA Chain of Custody procedures, as set forth in the National Enforcement Investigations Center Policies and Procedures Manual (November 1984), the National Enforcement Investigations Center Manual for the Evidence Audit (September 1981), and Section 1.3 of SW-846, or any amended versions thereof, for such sample collection and

analysis activities conducted pursuant to this Consent Decree. In addition, Settling Defendant shall ensure that the laboratories utilized by Settling Defendant for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis", dated February 1988, and any amendments made thereto during the course of the implementation of this Consent Decree.

X.

PROJECT COORDINATOR

A. Within ten (10) days of the effective date of this Consent Decree, EPA and Settling Defendant shall each designate Project Coordinators to monitor the progress of the Work and to coordinate communication between EPA and Settling Defendant. The EPA Project Coordinator shall have the authority vested in the On-Scene Coordinator by the NCP as well as the authority to ensure that the Work is performed in accordance with all applicable statutes, regulations, and this Consent Decree. The EPA Project Coordinator shall also have the authority to require a cessation of the performance of any portion of the Work that, in the opinion of the EPA Project Coordinator, may present or contribute to an endangerment to public health, welfare, or the environment or cause or threaten to cause the release of hazardous substances from the Site. In the event the EPA Project

Coordinator suspends the Remedial Action or other Work, EPA may extend the compliance schedule of this Consent Decree as appropriate for a period of time equal to the time of the suspension of the Remedial Action or other Work. EPA shall notify Settling Defendant, in writing, of any such unilateral extension. EPA and Settling Defendant shall have the right to change their respective Project Coordinators. Such a change shall be accomplished by notifying the other party in writing at least seven days prior to the change where possible, and concurrently with the change or as soon thereafter as possible in the event that advance notification is not possible.

B. Settling Defendant's Project Coordinator shall have technical expertise sufficient to adequately oversee all aspects of the Work. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities. Settling Defendant's selection of a Project Coordinator shall be subject to EPA approval.

C. The EPA Project Coordinator may assign other representatives, including other EPA employees or contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities. Prior to invoking formal Dispute Resolution procedures in Section XIX, any disputes arising between the EPA Site representative and Settling Defendant's Site representative or their respective contractors

which cannot be resolved shall be referred to the EPA Project Coordinator.

XI.

FACILITY ACCESS, SAMPLING, DOCUMENT AVAILABILITY

A. To the extent that any portion of the Site is presently owned by a party other than Settling Defendant, Settling Defendant shall use best efforts to obtain access agreements from the present owners for purposes of implementing the requirements of this Consent Decree. "Best efforts", for purposes of obtaining access, includes, but is not limited to, payment of reasonable sums of money as consideration for access where appropriate or required by law. Such agreements shall provide access not only for Settling Defendant, but also for EPA and NYSDEC and authorized representatives or agents of EPA and NYSDEC. If such access agreements are not obtained by Settling Defendant within the time periods specified herein, Settling Defendant shall so notify EPA. Should Settling Defendant, using its best efforts, be unable to obtain, within thirty (30) days of entry of this Consent Decree, access to the Site, Settling Defendant shall so notify EPA and shall include in that notification a summary of the steps Settling Defendant has taken to attempt to obtain access. As appropriate, EPA may assist Settling Defendant in obtaining such access. Settling Defendant shall reimburse EPA for all such costs incurred by EPA in assisting Settling Defendant in its efforts to obtain access,

which shall be deemed oversight costs and shall be reimbursed consistent with Section XX.

B. During the effective period of this Consent Decree, EPA, NYSDEC and their representatives, including contractors, shall have access at all times to the Site and any other premises upon which field work or laboratory analytical work is to be performed under this Consent Decree, for the following purposes: monitoring the progress of activities, verifying data or information submitted to EPA, conducting investigations relating to contamination at or near the Site, obtaining samples at the Site, inspecting and copying records, operating logs, contracts, or other documents required to assess Settling Defendant's compliance with this Consent Decree, or for any other purpose reasonably related to EPA's and/or NYSDEC's oversight of the implementation of this Consent Decree.

C. Within seven (7) days of a request by EPA, Settling Defendant shall make available to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the Site and/or the implementation of this Consent Decree.

D. At the request of EPA, Settling Defendant shall provide split or duplicate samples to EPA or allow split or duplicate samples to be taken by EPA or its authorized representatives of any samples collected by Settling Defendant during the course of the implementation of this Consent Decree. Settling Defendant shall notify EPA at least fourteen (14) days in advance of any

scheduled sample collection activity. Settling Defendant shall notify EPA of any changes in said schedule which are necessary, such as schedule changes caused by adverse weather, contractor rescheduling, or other causes. Notification in advance of any such change in scheduled activities shall be a prerequisite to any sampling collection activity at the Site conducted under this Consent Decree. In addition, EPA shall have the right to take any additional samples that it deems necessary.

E. Notwithstanding any other provision of this Consent Decree, EPA hereby retains all of its information gathering, access, and inspection and enforcement authorities under CERCLA, RCRA and any other applicable statute or regulations.

XII.

PUBLIC INSPECTION

All data, factual information, and documents submitted by Settling Defendant to EPA pursuant to this Consent Decree shall be available for public inspection unless identified as confidential by Settling Defendant and determined by EPA to merit treatment as confidential business information in accordance with applicable law. Settling Defendant shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified in Section 104(e)(7)(F)(i) through (viii) of CERCLA, or any other chemical, scientific or engineering data related to the Remedial Action or submitted pursuant to this Consent Decree.

XIII.

REPORTING REQUIREMENTS

A. In addition to any other requirement of this Consent Decree, Settling Defendant shall prepare and provide to the United States written quarterly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous quarter; (2) include all results of sampling and tests and all other data received by Settling Defendant during the previous quarter in the implementation of the Work; (3) include all workplans, plans and other deliverables required by this Consent Decree completed during the previous quarter; (4) describe all actions, including data collection and implementation of workplans, which are scheduled for the next quarter and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and PERT charts; (5) describe all activities undertaken in support of the Community Relations Plan during the previous quarter and those to be undertaken in the next quarter; (6) include information regarding percentage of completion of the work required under this Consent Decree, all delays encountered or anticipated that may affect the future schedule for completion of the Remedial Action, and a description of all efforts made to mitigate those delays or anticipated delays. These progress reports are to be submitted to EPA by the tenth day of every quarter following the effective date of this Consent Decree until

the termination of this Consent Decree under Section XXXIV, infra. In addition, EPA may request periodic briefings by Settling Defendant to discuss the progress of the Work.

B. If the date for submission of any item or notification required by this Consent Decree falls upon a weekend or State or Federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday.

C. Upon the occurrence of any event during performance of the Work which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Settling Defendant shall, within 24 hours, orally notify the EPA Project Coordinator, or, in the event of the unavailability of the EPA Project Coordinator, the Response and Prevention Branch, Region II, United States Environmental Protection Agency, in addition to the reporting required by Section 103. Within 20 days of the onset of such an event, Settling Defendant shall furnish to EPA a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto.

D. Settling Defendant shall submit each year, within 30 days of the anniversary of the entry of this Consent Decree, a report to the Court and the Parties setting forth the status of the Work, which shall at a minimum include a statement of major milestones accomplished in the preceding year, a statement of tasks remaining to be accomplished, and providing a schedule for implementation of the remaining Work.

E. All reports and other documents submitted by Settling Defendant to EPA (other than the quarterly progress reports referred to above) which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by a responsible municipal officer of Settling Defendant.

XIV.

PLANS, REPORTS AND ITEMS REQUIRING EPA APPROVAL

A. If EPA disapproves any plan, report (other than a progress report, covered by Section XIII.A., above), or other item required to be submitted for EPA approval pursuant to this Consent Decree, then Settling Defendant shall have thirty (30) days from the receipt of notice of such disapproval to correct any deficiencies and resubmit the plan, report or item for approval, unless a shorter or longer period is specified in the notice of disapproval. Any notice of disapproval by EPA shall include an explanation of why the plan, report or other item is being disapproved. Settling Defendant must address each of the EPA comments and resubmit the previously disapproved plan, report or item with the required changes within the time period set forth above.

B. In the event of approval by EPA, Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

C. If any plan, report or other item required to be submitted to EPA for approval pursuant to this Consent Decree cannot be approved by EPA after it has been resubmitted following

receipt of EPA's comments on the submittal, Settling Defendant may be deemed to be out of compliance with this Consent Decree. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA retains the right to amend or develop the plan, report or other item. Subject only to its right to invoke the dispute resolution procedures of Section XIX, below, Settling Defendant shall implement any such plan, report or item as amended or developed by EPA.

D. All plans, reports and other submittals required to be submitted to EPA under this Consent Decree shall, upon approval by EPA, be deemed to be incorporated in and an enforceable part of this Consent Decree. Implementation of non-deficient portions of a submission shall not relieve Settling Defendant of its liability for stipulated penalties under Section XXI.

XV.

ASSURANCE OF ABILITY TO COMPLETE WORK

Settling Defendant shall demonstrate its ability to complete the Remedial Action and to pay all claims that may arise from the performance of the Remedial Action by obtaining, and presenting to EPA for approval within thirty (30) days after the effective date of this Decree, one of the following items: (1) performance bond; (2) letter of credit; (3) guarantee by a third party; (4) financial information in accordance with 40 CFR §264.143; or (5) a letter which demonstrates Settling Defendant's full faith and credit for undertaking the actions required under this Consent Decree. The bond, letter of credit, guarantee,

financial information or letter must be sufficient to assure EPA that Settling Defendant has sufficient assets to perform the work and make additional assurances unnecessary. Settling Defendant shall annually submit such financial assurances. If EPA determines that such financial assurances are inadequate, EPA shall so inform Settling Defendant by written notice and Settling Defendant shall have thirty (30) days from the date of receipt of such written notice to obtain and provide EPA with further financial assurances which shall assure EPA, in its discretion, that Settling Defendant has sufficient assets to complete the Remedial Action and to pay all claims that may arise against Settling Defendant as a result of the performance of the Remedial Action.

XVI.

RETENTION OF RECORDS

A. Settling Defendant shall preserve and retain all records and documents now in its possession or control or which may hereinafter come into its possession or control that relate in any manner to the performance of the work conducted under this Consent Decree, regardless of any document retention policy to the contrary, for six (6) years after the certification of completion of the Remedial Action.

B. Until completion of the Remedial Action and termination of this Consent Decree, Settling Defendant shall preserve, and shall instruct its contractors, the contractors' subcontractors, and anyone else acting on Settling Defendant's behalf with regard

to work conducted in accordance with this Consent Decree to preserve (in the form of originals or exact copies, or, if approved by EPA, microfiche or microfilm of all originals) all records, documents, and information of whatever kind, nature, or description relating to the performance of the work at the Site. Upon the conclusion of the document retention period, Settling Defendant shall notify the United States at least thirty (30) days prior to the destruction of such records, documents, or information and if requested by EPA, copies of all records, documents, and information shall be delivered to the EPA Project Coordinator.

C. Settling Defendant hereby certifies that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability with regard to the Site since notification of potential liability by the United States regarding the Site, except as set forth in attachment #1.

XVII.

RESPONSE AUTHORITY

Nothing in this Consent Decree shall be deemed to limit the response authority of EPA under Section 104 of CERCLA, 42 U.S.C. §9604, and its enforcement authority under Section 106 of CERCLA, 42 U.S.C. §9606, or any other Federal response or enforcement authority, except as specifically provided in Section XXII, below.

XVIII.

FORCE MAJEURE

A. "Force Majeure" for purposes of this Consent Decree is defined as any event arising from causes entirely beyond the control of Settling Defendant and any entity controlled by Settling Defendant, including its contractors and subcontractors, which delays or prevents the performance of any obligation under this Consent Decree. Force Majeure shall not include inability of Settling Defendant to pay necessary costs, unanticipated or increased costs or expenses, changed financial circumstances, non-attainment of the requirements of this Consent Decree, or failure to make reasonable efforts to obtain permits, access, or any other necessary authorizations.

B. When circumstances occur which may delay the proper completion of any phase of the work, or delay access to the Site or to any other property on which any part of the Work is to be performed -- whether or not such circumstances are caused by or constitute a "Force Majeure" event -- Settling Defendant shall, when it first becomes aware or should have become aware of such circumstances, immediately notify the EPA Project Coordinator by telephone, or in the event of his or her unavailability, the Chief of the New York/Caribbean Remedial Action Branch of the Emergency and Remedial Response Division of EPA Region II. Within seven (7) days of the date when Settling Defendant first becomes aware or should have become aware of the event which it

contends is responsible for the delay, Settling Defendant shall supply to EPA in writing the reason(s) for and anticipated duration of such a delay, Settling Defendant's rationale for interpreting such circumstances as being entirely beyond its control (should that be Settling Defendant's claim), the measures taken and to be taken by the Settling Defendant to prevent or minimize the delay, and the timetable for implementation of such measures. Such notice shall be accompanied by all available pertinent documentation, including, but not limited to, third party correspondence. Failure to give oral notice to EPA, accompanied by said written explanation, in a timely manner and/or comply with the above requirements shall constitute a waiver of any claim of Force Majeure, except to the extent that EPA has otherwise become aware of and acknowledged such an event that has caused a delay in the performance of Settling Defendant's obligations under this Consent Decree. Settling Defendant shall use its best efforts to avoid, discover, minimize, and remain apprised of any circumstances which may delay the completion of any phase of the Work or delay its obtaining access to any portion of the Site not under its ownership or control on which any part of the Work is to be performed.

C. If Settling Defendant claims and EPA agrees that a delay is or was attributable to Force Majeure, the Parties may provide such additional time as may be necessary to allow the completion of the specific phase of Work and/or any succeeding phase of the

Work affected by such delay, and limited thereto, with such additional time not to exceed the actual duration of the delay caused by the Force Majeure.

D. If EPA does not agree that the reason for the delay constituted a Force Majeure, nor that the duration of the delay is or was warranted under the circumstances, Settling Defendant may seek to resolve the dispute according to Section XIX., herein. Settling Defendant shall have the burden of proving by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by circumstances entirely beyond its control, that the amount of additional time requested is necessary to compensate for those circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of this Section. Should Settling Defendant carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree.

XIX.

DISPUTE RESOLUTION

A. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree and shall apply to all provisions of this Consent Decree.

B. Any dispute between EPA and Settling Defendant which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute for a period of up to twenty (20) days from the time notice of the existence of the dispute is received. The period for negotiations may be extended or shortened by agreement between EPA and Settling Defendant. A dispute shall be considered to have arisen when one party notifies the other party in writing that there is a dispute.

C. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding paragraph, the position advanced by EPA shall be considered binding unless, within ten (10) days after the end of the informal negotiation period, Settling Defendant provides EPA with written notice of Settling Defendant's invocation of the formal dispute resolution procedures of this Section. If circumstances constituting an emergency exist, Settling Defendant may invoke the formal dispute resolution procedures prior to the expiration of the informal negotiation period. Said notice shall be accompanied by a written statement of the issues in dispute, the relevant facts upon which the dispute is based, any factual data, analysis or opinion supporting Settling Defendant's position, and all supporting documentation on which Settling Defendant relies (hereinafter, "Settling Defendant's Statement of Position"). After receipt of Settling Defendant's Statement of Position, EPA may submit to Settling Defendant a written statement of EPA's

position on the issues in dispute, the relevant facts upon which the dispute is based, any factual data, analysis or opinion supporting EPA's position, and supporting documentation relied upon by EPA (hereinafter, "EPA's Statement of Position").

D. After receiving notice from Settling Defendant of the invocation of the formal dispute resolution procedures of this Section, EPA may determine that the dispute is to be resolved on the administrative record, which determination shall be binding upon Settling Defendant unless the Court, on its own initiative and not by or as a result of any objection of Settling Defendant, determines otherwise. Such administrative record shall be maintained by EPA and shall include the written notification of the dispute, the Parties' Statements of Position, and, if issued, the final decision of the Director of the Emergency and Remedial Response Division, EPA Region II, pursuant to paragraph E., below.

E. Upon review of the administrative record, the Director of the Emergency and Remedial Response Division, EPA Region II, shall issue a final decision resolving the dispute. Such decision shall be binding, subject to the rights of judicial review set forth in the following paragraph.

F. Any decision by EPA pursuant to the preceding paragraph shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendant within ten (10) days of receipt of EPA's decision pursuant to paragraph E., above. Said notice of judicial appeal shall set forth the matter

in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. A copy of said notice shall be sent to the United States. EPA may file a response to Settling Defendant's notice of judicial appeal.

G. The standard of judicial review shall be that provided by Section 113(j)(2) of CERCLA for all disputes pertaining to the adequacy or technique of any aspect of the Work performed by Settling Defendant. Otherwise, the standard of review for dispute resolution shall be determined by the Court, in accordance with CERCLA. In proceedings on any dispute, Settling Defendant shall bear the burden of coming forward with evidence and of persuasion on factual issues.

H. The invocation of formal dispute resolution procedures under this Section shall not of itself extend or postpone or affect in any way any obligation of Settling Defendant under this Consent Decree, except that payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. The period of dispute shall end upon the rendering of a decision by the Court regardless of whether any Party appeals such decision. In the event of an appeal, the penalty amount in dispute shall be placed into an escrow account until a decision has been rendered by the

final court of appeal. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI., below.

XX.

REIMBURSEMENT OF COSTS

A. Following the lodging of this Consent Decree, the United States will make available to Settling Defendant an accounting of those response costs incurred by EPA with respect to the Site prior to the date of entry of this Consent Decree for which the United States has not previously been reimbursed and for which the United States claims reimbursement from responsible parties. Settling Defendant shall, within thirty (30) days of the lodging of this Consent Decree, make a good faith offer of settlement. If EPA and Settling Defendant reach agreement within said thirty (30) days, Settling Defendant shall pay to the EPA Hazardous Substance Superfund (the "Fund") the agreed upon amount. If no agreement is reached, the United States reserves all of its rights to seek reimbursement.

B. Settling Defendant shall also reimburse the Fund for all costs incurred by the United States after the entry of this Consent Decree in conducting the periodic reviews referred to in Section VII, above, in assisting Settling Defendant in obtaining necessary access to the Site to perform work pursuant to this Consent Decree, in reviewing or developing the plans, reports, design documents and other items referred to or required hereunder, or in otherwise overseeing the implementation of the

Work. The United States will periodically submit an accounting of such costs to Settling Defendant. Settling Defendant shall, within sixty (60) days of its receipt of each such accounting, pay to the Fund the amount claimed by the United States.

C. All payments required by this Section shall be made by cashier's or certified check made payable to the "EPA Hazardous Substance Superfund" and shall reference on their face the legend "Port Washington Landfill Superfund Site" and the civil action number of this case. Payment shall be deemed made when received at the following address:

EPA - Region 2
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251

Settling Defendant shall transmit copies of each check to the persons specified in Section XXVIII, below.

XXI.

STIPULATED PENALTIES

A. Settling Defendant shall be liable to pay to the Fund stipulated penalties in the amounts set forth below for each day or part thereof that Settling Defendant fails to comply with any requirement of this Consent Decree (including, but not limited to, any time limit set forth in or established pursuant to this Consent Decree and any requirement set forth in an EPA-approved plan or schedule prepared pursuant to this Consent Decree) and for each instance of such noncompliance, unless such noncompliance is excused under the terms of Section XVIII., above. "Compliance" by Settling Defendant shall include

completion of any activity under this Consent Decree or any workplan or other plan approved under this Consent Decree in a manner acceptable to the United States and within the specified time schedules established by and approved under this Consent Decree.

B. All penalties shall be due and payable within thirty (30) days of Settling Defendant's receipt from EPA of a notice of noncompliance which describes the noncompliance and indicates the amount of penalties due. All penalties shall begin to accrue on the first day of failure to achieve compliance and shall continue to accrue through the final day of correction of the noncompliance, with the exception that, for instances where noncompliance is based on a determination by EPA as to acceptability of Work, stipulated penalties shall not begin to accrue until Settling Defendant is notified thereof. Nothing herein shall prevent the simultaneous accrual of stipulated penalties for separate violations of this Consent Decree. Payment of penalties shall not alter in any way Settling Defendant's obligation to comply with the requirements of this Consent Decree.

C. 1. Stipulated penalties shall accrue for failure by Settling Defendant to comply with any requirements of Subsections V. D., E., and F., X. A. and B., XI. C., XIII. A., and XV. as follows:

<u>Period of Noncompliance</u>	<u>Penalty per violation per day</u>
1st through 10th day	- \$ 350
11th through 20th day	- \$ 700
21st through 30th day	- \$1250
31st day and beyond	- \$2000

2. Stipulated penalties shall accrue for failure by Settling Defendant to comply with any requirements of this Consent Decree not specified in subsection C. 1., above, as follows:

<u>Period of Noncompliance</u>	<u>Penalty per violation per day</u>
1st through 15th day	- \$ 1250
16th through 30th day	- \$ 2500
31st day and beyond	- \$ 4000

D. Settling Defendant may dispute EPA's right to the stated amount of stipulated penalties by filing a petition with the Court in accordance with Section XIX., above, within 30 days of receipt of the notice of noncompliance. Penalties shall accrue but need not be paid during the dispute resolution period. If Settling Defendant fails to prevail upon resolution, however, EPA shall be entitled to all penalties which accrued prior to and during the period of dispute, within thirty (30) days of the resolution of the dispute.

E. Pursuant to 31 U.S.C. §3717, interest shall accrue on any amounts overdue under Subsection A., above, at a rate established by the Department of Treasury under 31 U.S.C. §3717 for any period of such delinquency. A handling charge shall be

assessed at the end of each 30-day late period, and a six percent per annum penalty charge shall be assessed if the penalty is not paid within ninety (90) days of the due date.

F. Nothing in this Section shall be construed as in any way limiting the right of the United States to seek any additional remedies, sanctions, or penalties available by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA; PROVIDED THAT Settling Defendant's total penalty exposure shall be limited to \$25,000 per day for its first violation and shall be limited to \$75,000 per day for second or subsequent violations of this Consent Decree.

XXII.

COVENANT NOT TO SUE

A. In consideration of actions which will be performed and payments which will be made by Settling Defendant under the terms of this Consent Decree, and except as otherwise specifically provided in this Consent Decree, the United States covenants not to sue Settling Defendant for Covered Matters. For purposes of this section, "Covered Matters" means any and all civil claims available to the United States under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§9606(a), 9607(a), and Section 7003 of RCRA, 42 U.S.C. §6973, for the performance or funding of the Work required under this Consent Decree and for the reimbursement of the costs specified in Section XX, above. This covenant not to sue shall take effect upon EPA's issuance of a Certification of

Completion in accordance with Section XXXIV, below, except that as to those actions that Settling Defendant is required, under this Consent Decree, to perform after EPA's issuance of a Certification of Completion, this covenant not to sue shall take effect upon Settling Defendant's satisfactory performance of those activities.

B. The Covenant not to sue as set forth in this Section does not pertain to matters other than those expressly specified to be "Covered Matters". The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters which do not fall within the definition of "Covered Matters", including, but not limited to, the following:

- (1) liability arising from hazardous substances removed from the Site;
- (2) liability arising from the past, present, or future disposal, releases, or threatened releases of hazardous substances, pollutants, or contaminants in areas not related or attributable to the Site;
- (3) damages for injury to natural resources resulting from the release of hazardous substances at or from the Site;
- (4) claims based on a failure by Settling Defendant to meet the requirements of this Consent Decree, including, but not limited to, claims for

injunctive relief or claims for civil penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. §9622(1);

(5) civil liability resulting from violations of Federal or State law which occur during implementation of the Remedial Action;

(6) liability for response actions other than those specifically authorized by the ROD, including, but not limited to, liability for any further response actions EPA deems necessary after conducting the periodic reviews referred to in Section VII, above;

(7) liability for all response costs incurred by the United States with respect to the Site, other than the response costs for which reimbursement is settled and compromised pursuant to Section XX, above;

(8) any matter for which the United States is owed indemnification under Section XXV of this Consent Decree; and

(9) criminal liability.

C. Notwithstanding any other provision in this Consent Decree, the United States reserves the right to institute proceedings in this action or to issue an order or to commence a new action (1) seeking to compel Settling Defendant to perform additional response work at the Site (or at any other area

affected by a release or threat of release of hazardous substances at or from the Site), regardless of whether the additional response work is within the scope of the Work required under this Consent Decree or the ROD, or (2) seeking reimbursement of the United States' response costs, if:

1. For proceedings prior to EPA certification of completion of the Remedial Action,
 - (a) conditions at the Site, previously unknown to the United States, are discovered after the entry of this Consent Decree, or
 - (b) information is received, in whole or in part, after the entry of this Consent Decree, and these previously unknown conditions or this information indicates that the Remedial Action is not protective of human health and the environment; or
2. for proceedings subsequent to EPA certification of completion of the Remedial Action,
 - (a) conditions at the Site, previously unknown to the United States, are discovered after the certification of completion by EPA, or
 - (b) information is received, in whole or in part, after the certification of completion by EPA, and these previously unknown conditions or this information indicates that the Remedial Action is not protective of human health and the environment.

D. Notwithstanding any other provision in this Consent Decree, the covenant not to sue in subparagraph A, above, shall not relieve Settling Defendant of its obligation to meet and maintain compliance with the requirements set forth in this Consent Decree, including the requirements of the ROD, which are incorporated herein. The United States reserves its right to take response actions at the Site in the event of a breach of the terms of this Consent Decree and to seek recovery of costs incurred after entry of this Consent Decree resulting from such a breach or relating to any portion of the Work funded or performed by the United States, or the costs incurred by the United States as a result of having to take administrative action or seek judicial assistance to remedy conditions at or adjacent to the Site.

E. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Site. The United States expressly reserves the right to sue any person(s) other than Settling Defendant in connection with the Site.

XXIII.

NATURAL RESOURCES DAMAGES

This Consent Decree shall not be construed to affect in any way any claims that the United States may have against

Settling Defendant for any liability for injury to, destruction of, or loss of natural resources in connection with or arising from the Site, and nothing in this Consent Decree shall be construed as a release or covenant not to sue Settling Defendant for any claims arising from damages to, destruction of, or loss of natural resources, or as the agreement of any Federal natural resource Trustee to covenant not to sue Settling Defendant pursuant to Section 122(j)(2) of CERCLA, 42 U.S.C. §9622(j)(2).

XXIV.

CONTRIBUTION PROTECTION

Settling Defendant may seek contribution from any other person who is liable or potentially liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), provided that the person has not resolved its liability to the United States in a judicially-approved settlement concerning the response action, pursuant to Section 113(f) of CERCLA, 42 U.S.C. §9613(f). Upon EPA's issuance of a Certification of Completion pursuant to Section XXXIV, below, Settling Defendant will have resolved its liability to the United States for the performance of the activities required by the ROD and this Consent Decree and the payment of the costs specified in Section XX, above, and, pursuant to Sections 113(f)(2) and 122(h)(4) of CERCLA, shall not be liable for claims for contribution regarding such matters; provided that as to the particular actions that Settling Defendant is required to perform under this Consent Decree after EPA's issuance of a Certification of Completion, Settling Defendant's liability to

the United States for the performance of those actions will be deemed resolved, for purposes of Section 113(f) of CERCLA, upon Settling Defendant's satisfactory performance of those actions. The rights that Settling Defendant has, after resolving its liability to the United States in accordance with the preceding sentence, against any person who has not resolved its liability to the United States shall be subordinate to the rights of the United States. Settling Defendant shall notify EPA sixty (60) days prior to filing an action for contribution against any other party.

XXV.

OTHER CLAIMS

A. Settling Defendant agrees to indemnify, save, and hold harmless EPA and its representatives from any and all claims or causes of action arising from acts or omissions of Settling Defendant and/or its contractors, subcontractors, or any other person acting on its behalf in the performance of the Remedial Action or its failure to perform fully or completely the Remedial Action.

B. EPA is not to be construed as a party to, and does not assume any liability for, any contract entered into by Settling Defendant in carrying out any obligation pursuant to this Consent Decree. The proper completion of the Work under this Consent Decree is solely the responsibility of Settling Defendant.

C. Settling Defendant waives any claims for damages or reimbursement from the United States or for set-off of any

payments made or to be made to the United States, arising from or on account of any contract, agreement or arrangement between Settling Defendant and any person(s) performing Work on or with respect to the Site, including, but not limited to, claims on account of construction delays.

XXVI.

CLAIMS AGAINST THE FUND

Settling Defendant waives any rights it may have to assert any claims pursuant to Sections 106(b)(2), 111 or 112 of CERCLA, 42 U.S.C. §§9606(b)(2), 9611, 9612, or any other provision of law, directly or indirectly, against the United States for reimbursement from the Hazardous Substance Superfund of any past costs or costs incurred by Settling Defendant in performing the Work called for in this Consent Decree. Nothing in this Consent Decree shall be construed as preauthorization by EPA of a CERCLA claim against the Hazardous Substance Superfund within the meaning of 40 CFR §300.25.

XXVII.

INSURANCE/FINANCIAL RESPONSIBILITY

Prior to commencing any on-site work, Settling Defendant shall provide evidence to EPA demonstrating that Settling Defendant passes the financial test described in 40 CFR §264.147(f) corresponding to liability coverage in the amount of ten million dollars, or provide EPA with adequate assurances such that EPA, in its sole discretion, may waive said requirements. In addition, for the duration of the Work under this Consent

Decree, Settling Defendant shall satisfy all applicable laws and regulations regarding the provision of workmens' compensation insurance.

XXVIII.

NOTICES

Whenever, under the terms of this Consent Decree, notice is required to be given, a report or other document is required to be forwarded by one party to another, service of any papers or process is necessitated by the dispute resolution provisions contained herein, or any other written communication is required, such correspondence shall be directed to the following individuals at the addresses specified below:

A. As to the United States or EPA:

1 copy: Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel

U.S. Environmental Protection Agency, Region II
26 Federal Plaza
New York, New York 10278

Attention: Port Washington Superfund Site Attorney

3 copies: Chief, New York/Caribbean Remedial Action Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Rm. 747
New York, N.Y. 10278

Attention: Port Washington Superfund Site Project
Manager

1 copy Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Benjamin Franklin Station
P.O. Box 7611
Washington, D.C. 20044

B. As to Settling Defendant:

1 copy: Supervisor, Town of North Hempstead
Town Hall
220 Plandome Road
Manhasset, NY 11030

1 copy: Commisioner of Public Works
Town of North Hempstead
285 Denton Ave.
New Hyde Park, NY 11040

In addition, when submitting to EPA any written communication required hereunder, Settling Defendant shall simultaneously submit two (2) copies of that communication to:

Director, Division of Hazardous Waste Remediation
New York State Department of
Environmental Conservation
Room 222
50 Wolf Road
Albany, N.Y. 12233

Attention: Port Washington Landfill Site Coordinator

XXIX.

PUBLIC PARTICIPATION

Final approval and entry of this Consent Decree are subject to the requirements of Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 CFR §50.7.

XXX.

MODIFICATION

No material modification shall be made to this Consent Decree without written approval of all parties to this Consent Decree and the Court. No oral modification of this Consent Decree shall be effective. Modifications that do not materially alter the requirements of this Consent Decree may be made upon

the written consent of all parties, which consent shall be filed with this Court. Nothing herein shall be deemed to alter the Court's power to supervise or modify this Consent Decree.

XXXI.

ADMISSIBILITY OF DATA

In the event that the Court is called upon to resolve a dispute concerning implementation of this Consent Decree, Settling Defendant waives any objection to the admissibility into evidence of the results of any analyses of samples collected by or for it at the Site or other analytical data gathered, generated, or evaluated pursuant to this Consent Decree.

XXXII.

CONTINUING JURISDICTION

The Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purposes of issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, enforce, terminate, or reinstate the terms of this Consent Decree or for any further relief as the interest of justice may require.

XXXIII.

COMMUNITY RELATIONS

Settling Defendant shall cooperate with EPA in providing information relating to the Remedial Action to the public. As requested by EPA, Settling Defendant shall

participate in the preparation of all appropriate information disseminated to the public and, to the extent possible, in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

XXXIV.

EFFECTIVE AND TERMINATION DATES

A. This Consent Decree shall be effective upon the date of its entry by the Court.

B. Except as stated otherwise in Section XXII.A., above, the covenant not to sue provided by Section XXII shall become effective upon EPA's issuance of a Certification of Completion according to the following:

- 1) EPA shall conduct a final inspection, as provided in Section VI. B. 1. e., above, and EPA shall issue a Certification of Completion upon its determination that Settling Defendant has completed the Work (apart from the activities referred to in paragraph 2 of this subsection) and has achieved all of the standards of performance required under this Consent Decree. After the final inspection but prior to the issuance of any Certification of Completion, EPA shall undertake a review of the Remedial Action under Section VII. The Certification shall be issued only if EPA determines that no response action under Section VII is then necessary.

2) Certification of completion of the Remedial Action does not in any way affect Settling Defendant's remaining obligations under this Consent Decree, including conducting a response action at the Southport Well in accordance with this Consent Decree and the ROD, should any such response action be required, operating, maintaining and monitoring any systems required under this Consent Decree, and reimbursing costs specified in Section XX.B., above, which are incurred after the Certification of Completion is issued by EPA.

XXXV.

NONADMISSION BY SETTLING DEFENDANT

This Consent Decree was negotiated and executed between the United States and Settling Defendant in good faith, and in doing so, Settling Defendant does not admit the truth of the factual statements and legal conclusions or allegations contained in this Consent Decree or in the accompanying Complaint. Nor does Settling Defendant waive any defenses, under CERCLA or other statute or regulation, with respect to issues addressed in this Consent Decree or the Complaint, except as otherwise provided in this Consent Decree. Except as otherwise provided in this Consent Decree, Settling Defendant reserves the right to controvert, in any subsequent proceeding, the validity of or the responsibility for any of the factual or legal determinations made herein. Nor is the execution of this Consent Decree, or any

statement herein, an admission as to liability or any violation of any law or regulation by Settling Defendant.

XXXVI.

FUTURE PROCEEDINGS

In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert that the United States is in any way precluded or barred from instituting such an action by the principles of res judicata or rules against claim splitting. In addition, Settling Defendant waives the right to contest the validity or terms of this Consent Decree.

XXXVII.

ENTRY OF THIS CONSENT DECREE

Settling Defendant consents to the entry of this Consent Decree without further notice.

XXXVIII.

SECTION HEADINGS

The section headings set forth in this Consent Decree are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Consent Decree.

XXXIX.

SERVICE OF PROCESS

Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in this manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure, including service of a summons, and any applicable local rules of this Court.

APPROVED and ENTERED this ____ day of _____, 1990.

UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this decree.

FOR THE UNITED STATES:

DATE

RICHARD B. STEWART
Assistant Attorney General
Environment and Natural
Resources Division
U.S. Department of Justice
Washington, D.C. 20530

DATE

Steve Gold
Trial Attorney
Environment and Natural
Resources Division
U.S. Department of Justice

Andrew J. Maloney
United States Attorney
Eastern District of New York

DATE

By:
Assistant United States Attorney
Eastern District of New York

DATE

7/25/90

CONSTANTINE SIDAMON-ERISTOFF
Regional Administrator
U.S. Environmental Protection Agency
Region II

TOWN OF NORTH HEMPSTEAD

By:

DATE

7/20/90

[Signature]

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